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7 **UNITED STATES DISTRICT COURT**
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

8 NORTHWEST LABORERS-EMPLOYERS
9 HEALTH & SECURITY TRUST, WESTERN
10 WASHINGTON LABORERS-EMPLOYERS
11 PENSION TRUST, NORTHWEST
12 LABORERS-EMPLOYERS TRAINING
13 TRUST, and WASHINGTON AND
14 NORTHERN IDAHO DISTRICT COUNCIL
15 OF LABORERS

Plaintiffs

v.

16 CAPITAL SEPTIC & EXCAVATION, LLC

Defendant

NO.

COMPLAINT FOR BREACH OF
COLLECTIVE BARGAINING
AGREEMENT

16 COME NOW PLAINTIFFS, and for their cause of action, allege as follows:

17 1. Plaintiffs Northwest Laborers-Employers Health & Security Trust, Western Washington
18 Laborers-Employers Pension Trust, and Northwest Laborers-Employers Training Trust (Trusts)
19 are joint labor-management employee benefit trusts created pursuant to § 302(c)(5) of the Labor-
20 Management Relations Act (the Act), 29 U.S.C. § 186(c)(5) and bring this action in accordance
21 with §§ 502(d)(1), 502(a)(3) and 515 of the Employee Retirement Income Security Act of 1974
22 (ERISA), 29 U.S.C. § 1001, et seq.

COMPLAINT FOR BREACH OF
COLLECTIVE BARGAINING AGREEMENT—1

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1 2. Plaintiff Washington and Northern Idaho District Council of Laborers and its affiliated
2 Union locals (Union) is a labor organization that has its principal office located at 3909 164th
3 Street SW, Lynnwood, Washington.

4 3. Defendant *Capital Septic & Excavation, LLC* (Employer) is engaged in business
5 within the jurisdiction of this Court, and such business affects commerce within the meaning of
6 § 301(a) of the Act, 29 U.S.C. § 185(a).

7 4. Jurisdiction is conferred on this Court by § 301(a) of the Act, 29 U.S.C. § 185(a) and
8 §§ 502(a)(3) and 502(e)(2) of ERISA, 29 U.S.C. § 1132(a)(3) and § 1132(e)(2).

9 5. At all times material the Employer and the Union and its affiliated Local 252 were
10 parties to a collective bargaining agreement (Labor Agreement) and Trust Agreements, material
11 parts of which are set forth as Exhibits A and B, respectively, to this Complaint. Plaintiff Trusts
12 are third-party beneficiaries to the Labor Agreements.

13 6. The terms of the Trust Agreements, and ERISA, 29 U.S.C. §§ 1027 and 1059, grant
14 the Trusts the authority to review the payroll records of the Employer to verify the accuracy of
15 the Employer's reporting of bargaining unit hours worked by the Employer's employees, and to
16 verify the corresponding required fringe benefit payments to the Trusts.

17 7. Pursuant to the authority granted in the Trust Agreements, Plaintiffs requested that the
18 Employer submit to an examination of its payroll records to determine if the Employer has
19 correctly reported hours and paid fringe benefit contributions, dues, and other wage deductions
20 on behalf of its laborer-classification employees. The Employer did not respond to requests from
21 Plaintiffs' Accountant (Anastasi & Moore, PLLC) for payroll audit (see *June 22, 2017*, letter
22 from Accountant, attached as Exhibit C), or the two subsequent letters from Plaintiffs' attorney.

1 8. The Employer has failed to abide by the terms and conditions set forth in the Trust
2 Agreements by refusing to produce the requested payroll records to the Trusts. Plaintiffs believe
3 the Employer has failed to abide by the terms and conditions set forth in the Labor Agreements
4 and the Trust Agreements and is delinquent in the payment of fringe benefit contributions, dues,
5 and other wage deductions in unknown amounts from *June 2015 forward*, which are due and
6 payable under the terms of the Labor Agreements and the Trust Agreements. The Employer's
7 failure to pay is also a violation of § 515 of ERISA, 29 U.S.C. § 1145.

8 9. The Employer's failure to produce its payroll records for inspection and to pay fringe
9 benefit contributions, dues, and other wage deductions which continue after the filing of this
10 Complaint violates the Labor Agreements and the Trust Agreements. The Employer's failure to
11 pay is also a violation of § 515 of ERISA, 29 U.S.C. § 1145.

12 10. The full extent of the Employer's delinquency in the payment of its required fringe
13 benefit contributions, dues and other wage deductions to the date of this Complaint is unknown
14 at this time and will be determined by an examination of the Employer's payroll records, which
15 examination is authorized by the Trust Agreements, ERISA, 29 U.S.C. §§ 1027 and 1059, and
16 controlling Federal court decisions.

17 11. The continuing failure of the Employer to produce its payroll records for review, to
18 pay contributions, dues, and other wage deductions, and to file monthly contribution report
19 forms makes the full extent of the Employer's delinquency uncertain and it will be determined at
20 the time of trial.

21 12. Under the terms of the Labor Agreements and Trust Agreements to which the
22 Employer is bound, the Employer is also obligated to pay all liquidated damages in the amount

1 of 15 percent (15%) of the delinquent contributions owing and interest computed at the rate of
2 15 percent (15%) per annum on all contributions owing, as well as costs and expenses incurred,
3 including reasonable attorney fees.

4 13. If judgment is entered by default, a reasonable attorney's fee as of the date of this
5 Complaint is \$2,000.00.

6 WHEREFORE, Plaintiffs pray for the following relief:

- 7 (a) Judgment against Defendant ***Capital Septic & Excavation, LLC*** representing
8 contributions, dues, and other wage deductions, liquidated damages, and interest
in an amount to be determined at the time of trial;
- 9 (b) All costs and attorney fees incurred; and
- 10 (c) Such other relief as the Court deems just and equitable.

11 DATED ***February 7, 2018***

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13 s/ Mary L. Stoll
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